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in the light of the circumstances and conditions hereafter related ~~that~~ hold that evidence seized in violation of the Fourth Amendment must be excluded from evidence at the trial.

We start with the proposition first stated in Wolf v Colorado, supra, in 1949 that the Fourth Amendment is "enforceable against the States through the Due Process Clause" ~~of the Fourteenth Amendment. At p. 27~~. "Accordingly, we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment." At p. 28. ~~Admittedly, Ohio has done just this~~ This Ohio has admittedly done. Wolf, however, does not prevent the state from using the illegally obtained evidence against the accused. Here then is the ~~We have~~ This double standard, ~~we believe, in causing such confusion has no place in our system of equal justice under law.~~ of law enforcement that ~~defendants [illegible]. Lest we examine the factors and [illegible] [illegible]~~

although Ohio has forthrightly admitted that this it has done the doctrine of Wolf would not prevent it from using the illegally seized evidence at trial. In ~~the~~ a federal prosecution evidence illegally seized by federal officers has for seventy five years been excluded. ~~at trial. This, then, is the double standard of law enforcement. Our problem therefore presents the double standard~~ The problem therefore ~~[illegible]~~ ~~the double standard of law enforcement and presents in its most delicate form the~~ encompasses not only a double standard of law enforcement in the administration of justice but the competing interests of the ~~[illegible]~~

a search and seizure "without authority of law but solely on the authority of the police" is by that amendment condemned.

~~For seventy five years illegally seized such evidence~~ has not been admitted in evidence at trial in a federal court.

social need that crime be repressed on the one ~~the security of the people against unreasonable search and seizure~~ hand against the ignoble example of police lawlessly invading the security of the privacy of the people in utter defiance of a constitutional mandate "second to none in the Bill of Rights" Harris v United States, 331 US 145, 157. Let us examine the factors thought controlling in Wolf.

It was first said that "most of the English speaking world does not regard as vital to such protection (of privacy) the exclusion of evidence". We have not found any cases from England or the Commonwealth countries that followed the exclusionary rule. The short answer, of course is that they have no constitutional mandate. Moreover, the federal rule was fashioned some seventy five years ago despite the "regard" of our English cousins. Next, great emphasis is placed upon the fact that in 1949 31 states out of 47, passing on the exclusion rule, rejected it. Today, however, the figures are in reverse. Twenty six states have adopted the rule. The Court then points out the other means of protection one is afforded by legal actions when his privacy is unlawfully invaded. Admittedly ~~however these are but empty remedies.~~ ~~These are, we believe, entirely insufficient~~ These include actions in trespass, damages, protest to officials, resisting force with force, prosecution in some states etc. ~~But the victim of an illegal search and seizure~~ [illegible]

~~states accused of crime and~~
Our experience, however, shows these to be empty remedies. Moreover, they stand in marked contrast to those afforded in ~~other~~ the protection of other rights "basic to a free society" such as coerced confessions, free speech and press and religious liberty. It would hardly be fair to so discriminate in the protection of constitutional rights. Finally, the Court says that the illegal activity of local officers is more amenable to public opinion and that this will act as a corrective to any abuses. Experience since that time has been to the contrary. ~~In Chicago alone~~ While cases involving search and seizure problems at the federal level have decreased they have increased enormously at the state and municipal level.* As to the citation of authority in support of its position the Court lists but one case ie People v Defore, 242 NY 13. But as Judge Cardoza [later Mr Justice Cardoza] pointed out at that time (1926) "~~the Fourth and Fifth Amendments the exclusionary rule~~ this Court had not held the Fourth Amendment "enforceable" against the states. Moreover, he specifically ~~said~~ held "In this State the immunity is the creature, not of ~~the~~ constitution, but of statute."